

HOUSE No. 4385

The Commonwealth of Massachusetts

By Mr. Finegold of Andover, for the committee on Telecommunications, Utilities and Energy, on
House, No. 4187, a Bill relative to gasoline dealers (House, No. 4385). December 7, 2009.

An Act RELATIVE TO GASOLINE DEALERS.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Barry R. Finegold	17th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act RELATIVE TO GASOLINE DEALERS.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make to ensure the motoring public adequate access to motor fuel, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 section 1. chapter 93e of the general laws is hereby amended by striking out
2 section 1, as appearing in the 2008 official edition, and inserting in place thereof the following
3 section:-

4 “book value”, actual cost less actual depreciation taken.

5 “dealer”, any person who is not a petroleum supplier and who purchases gasoline and
6 engages in the retail sale thereof under written agreements entered into with a petroleum
7 supplier.

8 “marketing agreement”, any agreement either written or oral between a supplier and a
9 retail dealer under which (1) the retail dealer promises to sell or distribute the produce or
10 products of the supplier; (2) the retail dealer is granted the right to use a trademark, trade name,
11 service mark or other identifying symbol or name owned by a manufacturer; or (3) the retail
12 dealer is granted the right to occupy premises owned, leased or controlled by a supplier.

13 “marketing premises”, the premises used by a dealer in connection with the sale or
14 distribution of motor fuel.

15 “person”, any individual, firm, fiduciary, partnership, corporation, trust or association.

16 “refiner”, a person who has an ownership, operating or controlling interest in an oil
17 refinery.

18 “supplier”, any person engaged in the sale, consignment or distribution of petroleum
19 products to retail outlets.

20 section 2. said chapter 93e is hereby amended by inserting after section 5a the following
21 section:-

22 section 5b. (a) to the extent not preempted by the petroleum marketing practices act, 15 u.s.c. §§
23 2801–2806, inclusive, no refiner that owns a fee simple interest in a marketing premises which is
24 leased to a dealer who has occupied such premises under a lease agreement or agreements for a
25 period of at least 3 consecutive years, or occupies under a lease agreement for a term of at least 3
26 years, shall sell, transfer or assign such interest unless such refiner has:

- 27 (1) made a bona fide offer to sell, transfer, or assign such interest to the dealer, which the
28 dealer shall have 30 days to accept or reject; provided, however, that such offer may
29 exclude signs displaying the insignia or any other trademark, service mark, copyright
30 or patented equipment of the refiner; or
31 (2) if applicable, offered the dealer a right of first refusal of any bona fide offer, made by
32 a third party and acceptable to the refiner, to purchase such refiner’s interest in such
33 premises. notice of such offer shall (i) be in writing; (ii) be posted by certified mail or
34 personally delivered to the dealer; and (iii) contain a full and complete copy of the
35 terms of the offer that must be matched by the dealer. the dealer shall have 30 days to
36 accept or reject the offer. if the dealer accepts an offer by the franchisor made
37 pursuant to this paragraph, (i) the refiner, as a condition for entering into the contract
38 for the accepted offer, may request as a good faith acknowledgment of the contract, a
39 deposit by the dealer of up to 5 percent of the total amount payable under the terms of
40 the contract, which shall be non-refundable if the dealer willfully defaults on the
41 contract; and (ii) the dealer shall have 90 additional days to obtain a binding
42 commitment for financing.

43
44 any modification of the offer presented to the refiner by the third party offeror must
45 require that offer, as modified, to be resubmitted to the dealer in accordance with the
46 foregoing provisions of this paragraph; provided, however, that the refiner, having
47 made an offer of a right of first refusal to transfer, assign, or sell to the dealer the
48 refiner’s interest in the premises, which offer the dealer has rejected or failed to
49 accept timely, shall not be required to make a new offer to the dealer upon
50 modification if the modified offer is substantially equivalent to or higher than: (i) an
51 earlier offer made by the same prospective buyer in the previous 6 months; or (ii) any
52 offer made in the previous 3 months. no right of first refusal shall apply to a
53 government taking by eminent domain or negotiated purchase, or a forced sale
54 pursuant to a foreclosure by an unrelated third party.
55

(b) to the extent not preempted by the petroleum marketing practices act, 15 u.s.c. §§ 2801–2806, inclusive, no refiner that leases a marketing premises from a third party and subleases that marketing premises to a dealer who has occupied such premises under a sublease agreement or agreements for a period of at least 3 consecutive years, or occupies under a sublease agreement for a term of at least 3 years, shall sell, transfer, or assign to another person the refiner’s interest in the lease unless such refiner has:

- (1) (i) made a bona fide offer to sell, transfer, or assign to the dealer the refiner’s interest in the lease; and (ii) made a bona fide offer to sell, transfer or assign the refiner’s interest in any improvements to such premises or equipment located thereon at a price not exceeding the greater of the fair market value or the book value of such improvements and equipment; provided, however, that such offer may exclude signs displaying the insignia or any other trademark, service mark, copyright or patented equipment of such refiner; or
- (2) if applicable, offered the dealer a right of first refusal of at least 30 days duration of any bona fide offer, made by another and acceptable to the refiner, to acquire the refiner’s interest in the lease and the improvements to the premises and equipment located thereon.

section 3. this act shall apply to agreements executed on or after November 23, 2009.